

REMARKS

By the present communication, claim 1 is amended and claim 7 is canceled. The amendment of claim 1 is supported within the claim itself. Claims 1-6 are thus pending. Applicant respectfully requests entry of this amendment after final because the amendment merely places rejected claims in condition for allowance or in better condition for appeal and does not require a new search. Applicants respectfully request reconsideration of the present application in view of the foregoing amendment and in view of the reasons that follow.

Claim Amendments

Claim 1 is amended without prejudice to recite that X1 or X3 is a transduction domain.

Applicant reserves the right to pursue the cancelled matter in one or more divisional or continuation applications.

Applicants respectfully request rejoinder of the non-elected claims, particularly Claim 6 which includes all of the limitations of claim 1 and was indicated by the Examiner to be eligible for rejoinder on page 3 of the Office Action of September 24, 2010.

Withdrawal of Rejection under 35 U.S.C. 102(b) in view of Uematsu (JP2001278894)

Applicant thanks the Examiner for withdrawing the rejection in view of Uematsu.

Rejection under 35 U.S.C. 102(b) in view of Brophy (US20030060399)

The Examiner has maintained the rejection of claims 1-2 for allegedly being anticipated by Brophy (US20030060399). Specifically, the Examiner notes that Brophy

teaches peptides of the sequence X1-X2-[X3-A(X4)APLP-X5]-n-X6, where X1 is absent or an aromatic ring, X2 is absent or a transduction domain, X3 the sequence WLRR, X4 is S, T, Y, D, E, X5 is 0-3 amino acids, X6 is a transduction domain (see claim 1). The reference specifically teach numerous sequences that contain the sequence WLRR(S,Y,T,D,E) (see pages 5-6). For example, the reference teaches the sequence WLRRASAP (see paragraph [0072]).

It is noted by the Examiner that Claim 1 uses “consisting” language with respect to the amino acid sequence of the polypeptide. It is further noted that the definition of X2, although reciting “AP”, does not recite “APLP” as taught by Brophy. Because the language of Claim 1 is closed, “APLP” is not encompassed, and the claim is therefore novel.

Applicant maintains that Brophy provides no reason to believe that peptides without the “LP” would have any useful biological function. As such, the claimed polypeptides are also non-obvious in view of Brophy.

Applicant respectfully disagrees with the rejection for at least the following reasons.

Claim 1 recites a polypeptide *consisting of* an amino acid sequence according to claim 1. The Examiner has interpreted “the additional amino acids that comprise LP on the C-terminal end of X2 can be interpreted as part of the transduction domain”. However, with the amendment to claim 1, the reasoning no longer applies. Claim 1 requires X3, when present, to be a transduction domain. The Examiner has failed to demonstrate that the cited art teaches a protein transduction domain includes the N-terminal sequence LP. Applicant notes that none of the specific transduction domains in the instant application (see page 11, line 21 to page 12, line 2) begin with the sequence LP. Absent evidence that a protein transduction domain can have LP at the N-terminus, the rejection should be withdrawn. Applicants are aware of no such evidence.

Withdrawal of the rejection is respectfully requested.

Double Patenting Rejections in View of U.S. Patent Nos. 7,135,453 and 7,381,699

The Examiner has maintained the rejection of claims 1-2 based on the judicially created doctrine of non-statutory obviousness type double patenting in view of U.S. Patent Nos. 7,135,453 and 7,381,699. As the Examiner notes, the claims of both of these patents require the sequence X1-X2-[X3A(X4)APLP-X5]-n-X6.

The rejection fails for the same reason as the rejection under 35 U.S.C. §102. As discussed in the section above responding to the novelty rejection in view of Brophy, Claim 1 does not permit the APLP tetramer to be in the recited polypeptide and, as such, is novel and non-obvious. Withdrawal of the rejection is requested.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-4876 referencing Docket No. 120472-00402. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-4876.

Respectfully submitted,

Date September 7, 2011

Electronic Signature: /Colleen McKiernan/
Colleen McKiernan, Ph.D.
Registration No.: 48,570
617-449-6500 (T)
617-607-9200 (F)
McCarter & English, LLP
265 Franklin St.
Boston, Massachusetts 02110
Attorneys/Agents For Applicant
Customer No. 94607